

MV 95-9

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax, Business Reorg/Family Sale

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )  
                               )  
      v.                       )   No.  
                               )   Acct. No.  
                               )   NTL No.  
XXXXXX                        )  
                               )   Alfred Walter  
                               )   Admin. Law Judge  
      Taxpayer                 )  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, for the Taxpayer

SYNOPSIS: This matter comes on for hearing to the taxpayer's timely protest of a Notice of Tax Liability and Correction of Return issued by the Department on August 12, 1994, for Use Tax on the transfer of title of a motor vehicle from a corporation known as XXXXX which had two shareholders, XXXXX, to XXXXX and his wife, XXXXX. XXXXX was thereupon dissolved, and a new firm was created, in which both XXXXX and XXXXX became members.

Taxpayer argues that this was a business reorganization, and was qualified to exempt the transfer of title to the motor vehicle from use tax upon payment of the statutory fee of \$15.00, and that in any event he made a phone inquiry to the Secretary of State's office before title was transferred, and that he was assured by some person in that office that this transfer of title was exempt from the Vehicle Use Tax.

Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all

jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and owing in the amount of \$101.64. (Dept. Grp. Ex. No. 1)

2. The alleged misinformation provided to the taxpayer, relating to the tax due in this matter, came from an alleged conversation with an employee of the Secretary of State's office, and not from the Department of Revenue. Tr. p. 5

3. The motor vehicle involved in this matter was originally titled in the name of a professional corporation, in which this taxpayer was one of two shareholders in the firm, and the beneficial interest in the vehicle at that time rested in those two shareholders. Tr. p. 6

4. When the professional corporation was dissolved the title to the vehicle was transferred to this taxpayer and his wife, and the beneficial interest was changed accordingly. Tr. p. 7

CONCLUSIONS OF LAW: On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that the taxpayer is subject to the standard rate of tax as imposed by the Vehicle Use Tax must stand as a matter of law. In support thereof the following conclusions are made.

Taxpayer's argument that this transaction is exempt from the Vehicle Use Tax, and subject only to a statutory rate of \$15.00 is predicated upon the language of the statute which reads as follows:

For the following transactions, the tax rate shall be \$15.00 for each motor vehicle acquired in such transaction:

(i)

(ii)

(iii) when a motor vehicle which has once been subjected to the Illinois retailers' occupation tax or use tax is transferred in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business, wherein the beneficial ownership is not changed.

(625 ILCS 5/3-1001)

The key words are "wherein the beneficial ownership is not changed." There is no dispute that in the instant case the beneficial interest in this vehicle was changed. It went from a corporation to two individuals, one of whom had not been involved with the corporation prior to its dissolution. Tr. p. 7

The other argument advanced by the taxpayer, to the effect that he had made inquiry by a phone call to the Secretary of State's office and was told that the transfer would require only the payment of \$15.00, is also not tenable. The taxpayer argues that the Secretary of State provides the documents and forms necessary to effect the transfer of title, and is, therefore, the logical place to make inquiry and to seek advice, and that he could have structured the transfer to avoid the Vehicle Use Tax had he not been misinformed by whoever it was that he spoke with. Tr. pp. 7, 8, 9, 10

Assuming that everything the taxpayer says occurred is true, I cannot give the factual occurrence the legal effect that the taxpayer urges. I direct the taxpayer's attention to 86 Illinois Administrative Code, Chapter 1, Section 130.1001 when opinions from the Department are binding:

a. Taxpayers must not rely on verbal opinions from Department employees, but will be protected only if the opinion from the Department is in writing. Even then . . .

Giving effect to the foregoing it is abundantly clear that even if the taxpayer can substantiate the alleged conversation with an employee of the Secretary of State, or, for that matter, with an employee of the Department of Revenue, absent a written opinion or advice in writing, the taxpayer

cannot rely thereon, and does so at his peril.

Based on the foregoing facts I recommend that Notice of Tax Liability No. XXXXX be affirmed as issued.

Administrative Law Judge